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EXAMINER

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ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 052704

Application Number: 09/326,405

Filing Date: June 04, 1999

Appellant(s): LUNDAHL, DAVE B.

William W. Cochran  
For Appellant

**SUPPLEMENTAL EXAMINER'S ANSWER**

This is in response to the Remand from the Board of patent Appeals and Interferences 7/29/05.

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**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 11-13, 15-18, 20-23, 25-28, 30-33 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

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**(9) Prior Art of Record**

2,713,896	Kehne	7-1955
3,753,458	Lazarek	8-1973
5,365,707	Jones et al	11-1994

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-13, 15-18, 20-23, 25-28, 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kehne (2713896) in view of Lazarek (3753458).

Kehne (figures 1-4) shows an operable window system having a removable screen (col 3 lines 17-20) having a fixed frame (26, figure 4) for holding a window, a moving sash (9, 16) connected to the fixed frame and operable to substantially swing about an axis with respect to the fixed frame from an open position to a closed position, a removable screen (28) directly connected to the fixed frame, the screen mounted between the fixed frame and the moving sash such that the moving sash is in contact with the screen (figure 3 shows the sash touching the screen) when the sash is in the closed position, the axis being substantially vertical/horizontal

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(direction not defined yet by the claim), the portion of the moving sash in contact with the screen being the frame portion of the moving sash.

Kehne does not show the screen being attached to the frame by hook and loop fastener, the screen not having a substantially rigid peripheral frame.

Lazarek shows a screen (30) being attached to a fixed frame with hook and loop fasteners to enable easy and quick mounting/dismounting of the screen from the frame, the screen not having a substantially rigid peripheral frame to enable easy fitting of the screen frame around a window frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kehne to show the screen being attached to the frame by hook and loop fastener, the screen not having a substantially rigid peripheral frame because it would enable easy and quick mounting/dismounting of the screen from the frame and easy fitting of the screen frame around a window frame as taught by Lazarek.

Per claims 21-23, 25, 32-33, Kehne as modified by Lazarek shows all the claimed limitations. The claimed method steps would have been the obvious method steps of manufacturing Kehne's modified window system.

3. Claims 14, 19, 24, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kehne (2713896) in view of Lazarek (3753458) as applied to claims 11, 16, 21, 26 above and further in view of Jones et al (5365707).

Kehne as modified shows all the claimed limitations except for the window system being non-rectangular.

Jones et al shows rectangular and non-rectangular window openings with screen covering (figure 3).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kehne's modified structure to show the window system being non-rectangular because it is well-known expedient in the art to have window system of non-rectangular shape to cover non-rectangular openings as shown by Jones et al.

**(11) Response to Argument**

Examiner is responding to the Remand of the Board of Appeal and Interferences 7/29/05 to the argument to commercial success set forth by the Affidavit to Randy Helzer.

The affidavit is not persuasive for the following reasons. First of all, applicant discloses only one architect specifies the use of the Frameless Velcro Screen System, and the sales to one architect does not constitute exuberant commercial success. Furthermore, the part of the system which is preferred by the architect (the screen being mounted between the fixed frame and the moving sash) is disclosed by the reference Kehne. Secondly, it is unclear from section 15 of applicant's affidavit what drives the sales \$6,300,000. How many of the Frameless Velcro Screen System is included in the sales of 15 major orders of window systems? What is the driving force behind the major sales? How many vendors/consumers are involved in the sales, and what are their reasons for making the purchase? Thirdly, how many Frameless Velcro Screen System are included in the sales of \$720,000.00 for windows and doors? How many vendors/consumers are involved, and what are the reasons for the purchases? Is "the elimination of the conventional aluminum screen frame" is the reason for the sale or is there other factors like price, appearance, commercial relationships etc... involved? Fourthly, it is unclear once

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again what drives the sales \$580,000. How many of the Frameless Velcro Screen System is included in the sales for casement type windows? What is the driving force behind the major sales? How many vendors/consumers are involved in the sales, and what are their reasons for making the purchase? Is "the aesthetic value" the reason for the sale or is there other factors like price, appearance, commercial relationships etc... involved? What part of system is the aesthetic value based on?

Examiner is reiterating the arguments set forth in the examiner's answer of 6/2/04 below.

Applicant asserts that Kehne teaches away from a removable screen per column 1 lines 60-62 to "more or less permanent manner", examiner respectfully disagrees. First of all "more or less permanent manner" can also mean "temporary mounting manner". If Kehne's teaching were to mean only "permanent", the reference would have said "permanent". The wording "more or less permanent" thus also denotes a mounting manner which may not be permanent. It is thus established that Kehne does not teach a permanent mounting screen. Furthermore, it is also well known in the art that a screen mounted to a window is removable for the purpose of cleaning the window sash and frame. The fact that screen is meant to be removable is further illustrated by an article in Washington Post (<http://www.washingtonpost.com/wp-dyn/articles/A56872-2004May26.html>). The argument is thus moot.

With respect to applicant's argument to Lazarek per the use of a permanent screen, the argument is moot in light of the examiner's argument presented above.

With respect to applicant's argument that a combination would require a change in principle of operation of the references, examiner respectfully disagrees. First of all, Kehne and Lazarek both teach the use of a window screen on a frame. The use of Lararek's screen on

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Kehne's frame would enable the screen to be easily removed and thus is motivated. The combination of Kehne and Lazarek certainly does not change the "more or less permanent" nature of the screen. Applicant also states that combination is to have the screen mounted to the interior portion of the window frame as taught by Lazarek, examiner respectfully states that Kehne is the primary reference to be modified upon and not Lazarek; the screen thus is mounted as taught by Kehne. Also, mounting the screen to Kehne's frame with hook and loop fastener as taught by Lazarek does not present any harder mounting procedure as currently encountered by mounting Kehne's screen. The argument is thus moot.

With respect to applicant's argument to the "rigid frame around the screen", examiner respectfully points out that the use of a screen without a substantially rigid peripheral frame is taught by Lazarek. Lazarek's screen is mounted and fitted to a window frame with ease. The use of Lazarek's screen and frame in Kehne's window frame structure is thus encouraged and motivated. The argument is thus moot.

With respect to applicant's argument to "The teachings of Kehne and Lazarek conflict", examiner respectfully points out that there is no conflict in combining the teachings as the teaching of Kehne does not require a "permanent" mounting of the screen as discussed above. The argument is thus moot.

With respect to applicant's argument that there is no teaching of the moving sash contacting the screen when the sash is in the closed position, examiner respectfully disagrees. As pointed out in the office action above, figure 3 shows the sash touching the screen when the sash is in the closed position. The argument is thus moot.



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With respect to applicant's argument that Jones does not make up the deficiencies of the other references, examiner respectfully points out that the Jones reference is to teach the window system being non-rectangular. In that respect, Jones does teach a deficiency of the references.

The argument is thus moot.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Phi Dieu Tran A

September 2, 2005

Conferees

Lanna Mai 

Peter Cuomo 